

**DELETE THESE INSTRUCTIONS BEFORE  
FINALIZING CONTRACT**

**INSTRUCTIONS FOR FORM CIP2.3 – CONSTRUCTION SERVICES CONTRACT  
FOR DESIGN-BID-BUILD (DBB) PROJECT**

**PURPOSE:** To use in construction documents the project will be bid. This document should be provided to the PM/CM or A/E, as appropriate, for preparation of the contract documents. Please contact the Town Attorney if significant changes are made, since the contract language tracks the requirements of both the A/E contract and the PM/CM contract during the construction phase.

**ITEMS TO BE COMPLETED:**

Fill in all blanks.

Attach Notice and Call for Bids

Attach General Conditions Form CIP2.4.1 if no PM/CM is to be used, or Form CIP2.4.2 if there will be a PM/CM for the project.

**CONSTRUCTION SERVICES CONTRACT  
FOR DESIGN-BID-BUILD (DBB) PROJECT**

**Project:** Higley/Warner Improvements  
**CIP No.:** ST-152  
**Contract No.:** 2013-7003-0019  
**Date:** January 2015

## CONSTRUCTION SERVICES CONTRACT FOR DESIGN-BID-BUILD (DBB) PROJECT

THIS CONTRACT, made and entered into this [REDACTED] day of [REDACTED], 20[REDACTED], by and between the Town of Gilbert, Arizona, a municipal corporation organized and existing under and by virtue of the laws of the State of Arizona, hereinafter designated the "GILBERT" and [REDACTED], a [REDACTED] corporation, hereinafter designated the "CONTRACTOR."

GILBERT and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### 1.0 CONSTRUCTION SERVICES

- 1.1 CONTRACTOR shall complete all work as specified or indicated in the Contract Documents. The work is known as and is hereinafter referred to as the **Higley/Warner Improvements Project** and is generally described as follows: Complete construction of the **Higley/Warner Improvement** in accordance with the Contract Documents. The full scope of work is described in detail in the Contract Documents.
- 1.2 CONTRACTOR shall complete, provide and perform, or cause to be performed, all work in a proper and workmanlike manner, with appropriate consideration for public safety and convenience, consistent with the highest standards of professional and construction practices and in full compliance with, and as required by or pursuant to, this Contract, and with the greatest economy, efficiency, and expediency consistent therewith all as more particularly described in the Contract Documents.

### 2.0 CONTRACT TIME

- 2.1 CONTRACTOR shall submit to GILBERT, on or before the effective date of this Contract, a Critical Path Method (CPM) Construction Progress Schedule in Primavera compatible format, resource and cost loaded, indicating the times for starting and completing the various stages of the Work, including any Milestones specified in this Contract and as more fully described in the General Conditions and other Contract Documents. Revisions/updates to the CPM schedule shall be submitted to accurately reflect plans for completion of the work, but no less frequently than monthly.
- 2.2 Time is of the Essence. All of the time limits for Milestones, if any, for Substantial Completion and for Final Completion and readiness for final payments as stated in the Contract Documents, are of the essence for the Contract.
- 2.3 The Work shall be substantially complete within **220** working days after the date when the Contract Times commence to run as provided in the Notice to Proceed, and all Work shall be finally completed and ready for final payment in accordance with the Notice to Proceed within **242** working days after the date when the Contract Times commences to run.

- 2.4 Failure of CONTRACTOR to perform any covenant or condition contained in the Contract Documents within the time periods specified herein, shall constitute a material breach of this Contract entitling GILBERT to terminate the Contract unless CONTRACTOR applies for and receives an extension of time, in accordance with the procedures set forth in the Contract Documents.
- 2.5 Failure of GILBERT to insist upon the performance of any covenant or condition within the time periods specified herein shall not constitute a waiver of CONTRACTOR'S duty to perform every other covenant or condition within the designated periods, unless a specific waiver is granted in writing for each such covenant or condition.
- 2.6 GILBERT's agreement to waive a specific time provision or to extend the time for performance shall not constitute a waiver of any other time provisions contained in the Contract Documents. Failure of CONTRACTOR to complete performance promptly within the additional time authorized in the waiver or extension of time agreement shall constitute a material breach of this Contract entitling GILBERT to all the remedies set forth herein or provided by law.

### 3.0 LIQUIDATED AND SPECIAL DAMAGES

- 3.1 It is hereby agreed that the amounts per day set forth herein in paragraph 3.1.1 are reasonable estimates of such liquidated damages and that said amounts do in fact bear a reasonable relationship to the damage that would be sustained by GILBERT, and CONTRACTOR agrees to pay such liquidated damages as herein provided.
- 3.1.1 GILBERT and CONTRACTOR recognize that time is of the essence for this Contract and that GILBERT will suffer financial loss, in addition to and apart from the costs described in Paragraph 3.2, if the Work and/or portions of the Work are not performed and completed within the times specified, plus any extensions thereof allowed in accordance within the Contract Documents. GILBERT and CONTRACTOR also recognize the delays, expense, and difficulties involved in proving, through legal or arbitration proceedings, the actual loss suffered by GILBERT if the Work or portion of the Work is not completed on time. Accordingly, instead of requiring any such proof, GILBERT and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay GILBERT **one thousand four hundred twenty** dollars and no cents (**\$1,420.00**) for each working day that expires after the time specified for substantial completion, until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by GILBERT, CONTRACTOR shall pay GILBERT **one thousand four hundred twenty** dollars and no cents (**\$1,420.00**) for each working day that expires after the time specified for Final Completion and readiness for final payment.
- 3.2 Special Damages: In addition to the amounts provided for liquidated damages, CONTRACTOR shall pay GILBERT the actual costs reasonably incurred by GILBERT for GILBERT's PM/CM, if applicable, the Project Engineer and for engineering and inspection forces employed on the Work for each working day that expires after the time specified for

Final Completion, including any extensions thereof made in accordance with the Contract Documents, until the Work is finally complete. The rate for inspection services for this contract is **\$125.00** per hour. The rate for the work by the Project Engineer for this Contract is **\$140.00** per hour. The rate for work by GILBERT PM/CM, if applicable, is **\$150.00** per hour. Each of these hourly rates is calculated at time and one half for work required to be performed during other than normal business hours.

- 3.3 GILBERT may withhold and deduct from any payment due to CONTRACTOR the amount of liquidated damages, special damages, and other costs, such as CONTRACTOR'S failed testing costs or damages to other GILBERT property, from any moneys due CONTRACTOR under the Contract.

#### **4.0 CONTRACT PRICE**

GILBERT shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents, an amount in current funds not to exceed the sum of [REDACTED] dollars and no cents (\$ [REDACTED] ) as more specifically set forth in CONTRACTOR'S bid, and any additional amounts agreed to pursuant to valid CHANGE ORDER, approved by GILBERT.

#### **5.0 CONTRACT DOCUMENTS**

The following documents are pertinent to the Project:

- 5.1 This Contract (pages 1 to 7, inclusive).
- 5.2 Addenda consisting of Numbers [REDACTED] to [REDACTED] inclusive.
- 5.3 The project Specifications dated 1/12/15 entitled Technical Specifications for Higley and Warner Intersection Improvements Project.
- 5.4 The project Drawings comprised of a set entitled Higley and Warner Intersection Improvements Project and dated 7/28/2014.
- 5.5 Performance Bond (page [REDACTED]) and Payment Bond (page [REDACTED]).
- 5.6 The approved CPM Construction Schedule dated N/A.
- 5.7 The project General Conditions (pages 1 to 64, inclusive).
- 5.8 The project Supplementary Conditions (pages SC-1 to SC-8, inclusive).
- 5.9 Notice to Proceed dated [REDACTED].
- 5.10 CONTRACTOR'S List of Subcontractors (pages [REDACTED] to [REDACTED] inclusive).

- 5.11 CONTRACTOR'S Schedule of Manufacturers and Suppliers of Major Equipment and Material Items (page       ).
- 5.12 The following which may be delivered or issued after the Effective Date of this Contract and are not attached hereto:
- A. Written Attachments
  - B. Work Change Directives
  - C. Change Order(s)

## **6.0 MISCELLANEOUS**

- 6.1 This Agreement shall inure to the benefit of, and shall be binding upon GILBERT and CONTRACTOR and their respective successors and assigns.
- 6.2 This Agreement may not be amended or any of its terms modified without the written consent of GILBERT and CONTRACTOR.
- 6.3 This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- 6.4 This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.
- 6.5 CONTRACTOR agrees he is an independent contractor and not an agent or employee of GILBERT. CONTRACTOR shall supervise and direct the WORK to be done, using his best skill and attention. CONTRACTOR shall be solely responsible for all construction means, methods, techniques, sequences, procedures and for coordinating all portions of the WORK, required by the CONTRACT DOCUMENTS. CONTRACTOR shall be responsible to GILBERT for the acts and omissions of his employees, SUBCONTRACTORS and their agents and employees, and other persons performing any of the WORK under any CONTRACT DOCUMENTS.
- 6.6 Should litigation be necessary to enforce any term or provision of this CONTRACT, or to collect any damages claimed or portion of the amount payable under this CONTRACT, then all litigation and collection expenses, witness fees, court costs, and attorney's fees shall be paid to the prevailing party. Nothing herein shall preclude non-binding arbitration if they so elect in the event of a dispute hereunder.
- 6.7 Under Section 38-511, Arizona Revised Statutes, as amended, GILBERT may cancel any CONTRACT it is a party to within three years after its execution and without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the CONTRACT on behalf of GILBERT is, at any time while the CONTRACT or any extension thereof is in effect, an employee or agent of any other party to the CONTRACT in any capacity or a consultant to any other party to the CONTRACT with respect to the subject matter of the CONTRACT. In the event GILBERT elects to exercise its rights under Section

38-511, Arizona Revised Statutes, as amended, GILBERT agrees to immediately give notice thereof to CONTRACTOR.

- 6.8 All notices and demands required or permitted by this CONTRACT shall be in writing and shall be deemed to have been given or properly served when (1) sent by Certified Mail (postage fully prepaid) to the respective address below or to such other address as may be furnished by either party pursuant to this Section; (2) delivered personally to the authorized representative of the parties to this CONTRACT; or (3) if given by telefacsimile, when addressed and transmitted to the respective telefacsimile number as specified below or to such other address or telefacsimile number as may be furnished by either party to the other pursuant to this Section, and the appropriate confirmation of transmittal is received. Any party giving notice or demand by telefacsimile immediately shall send the other party a copy of such notice or demand by Certified Mail (postage fully prepaid) to the respective address below or to such other address as may be furnished by either party pursuant to this Section.

GILBERT:

**Patrick Banger**  
Town Manager  
Town of Gilbert  
50 East Civic Center Drive  
Gilbert, Arizona 85296

CONTRACTOR:

Representative Name  
Representative Title  
Company Name  
Company Address  
Company Address

- 6.9 No amendment or waiver of any provision of these CONTRACT DOCUMENTS nor consent to any departure by GILBERT shall be effective unless the same shall be in writing and signed by GILBERT. Such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.
- 6.10 No waiver by GILBERT of any default or breach by CONTRACTOR shall be deemed to be or constitute a waiver of any other or subsequent default or breach. GILBERT specifically reserves and shall have all rights and remedies available to it under the provisions of the CONTRACT DOCUMENTS.
- 6.11 Immigration Law Compliance Warranty:
- 6.11.1 As required by A.R.S. § 41-4401, Contractor hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Contractor further warrants that after hiring an employee, Contractor verifies the employment eligibility of the employee through the E-Verify program.
- 6.11.2 If Contractor uses any subcontractors in performance of the Work, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program.

- 6.11.3 A breach of this warranty shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract. Contractor is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. Gilbert at its option may terminate the Contract after the third violation. Contractor shall not be deemed in material breach of this Contract if the Contractor and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A).
- 6.11.4 Gilbert retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the Contract to ensure that the Contractor or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times.
- 6.11.5 If state law is amended, the parties may modify this paragraph consistent with state law.
- 6.12 Equal Treatment of Workers: CONTRACTOR shall keep fully informed of all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the WORK. CONTRACTOR shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring equal treatment for all employees and against unfair employment practices, including the Occupational Safety and Health Administration ("OSHA") and the Fair Labor Standards Act ("FLSA"). CONTRACTOR shall protect and indemnify GILBERT and its representatives against any claim or liability arising from or based on the violation of such, whether by CONTRACTOR or its employees.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day and year first written above.

TOWN OF GILBERT

By: \_\_\_\_\_  
**John Lewis, Mayor**

ATTEST:

\_\_\_\_\_  
Catherine A. Templeton, CMC  
Town Clerk

APPROVED AS TO FORM:



Project Name:  
Project No:  
Contract No:

## CONTRACTOR

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By: \_\_\_\_\_

Title: \_\_\_\_\_